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Serge Clement Willems

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GREENLEE WINNER AND SULLIVAN P C

4875 PEARL EAST CIRCLE

SUITE 200

BOULDER, CO 80301

EXAMINER

PHONGSVIRAJATI, POONSIN

ART UNIT

PAPER NUMBER

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/588,520	<b>Applicant(s)</b> WILLEMS, SERGE CLEMENT	
	<b>Examiner</b> SIND PHONGSVIRAJATI	<b>Art Unit</b> 3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 and 28 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 1 objected to because of the following informalities: Line 19 of claim 1 recites, "wherein the first computer program is operable so as to exchange medical data with a data processing device of a first type **en** the second computer program", which contains a clear spelling error. The Examiner will interpret the limitation to state, -- wherein the first computer program is operable so as to exchange medical data with a data processing device of a first type **and** the second computer program--. Appropriate correction is required.

### ***Specification***

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.

(f) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(g) BRIEF SUMMARY OF THE INVENTION.

(h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(i) DETAILED DESCRIPTION OF THE INVENTION.

(j) CLAIM OR CLAIMS (commencing on a separate sheet).

(k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

### **Content of Specification**

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).
- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.

- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
  - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
  - (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the

field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

- (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).
- (l) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claimed invention is directed to non-statutory subject matter. Claim 28 incorporates more than one statutory class at the same time. (IPXL Holdings v. Amazon.com, Inc., 430 F.2d 1377, 1384, 77 USPQ2d 1140, 1145 (Fed. Cir. 2005); <Ex parte Lyell, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990)) (MPEP 2173.05(p)). The claim is directed to neither a “process” nor a “machine,” but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. Id. at 1551.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6-7, 15, 18, 20-21, 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Tacklind (US 5,549,117).

3. As to **Claim 1**, Tacklind teaches a system for storing and exchanging medical data representative of the health of an individual (Abstract), the system comprising: a plurality of portable electronic storage devices, each storage device comprising an interface and one or more data carriers on which are stored medical data representative of the health of at least one individual, a first computer program and a second computer program (Abstract, Fig. 5B-7B); a data processing device comprising: a second

interface for connecting the data processing device to at least one of the portable electronic storage devices (col. 4 lines 17-35, col. 6 lines 1-9, Fig. 1), a processor configured so as to load from the connected portable electronic storage device either the first or the second computer program depending on the type of data processing device and executing the same, the loaded computer program including instructions that cause the processor to process the medical data stored on the portable storage device, said processing including reading, adding and modifying medical data stored on the connected portable electronic storage device (col. 6 lines 51-54, col. 7 lines 18-26); a display device for displaying said processed medical data (Fig. 1); wherein the first computer program is operable so as to exchange medical data with a data processing device of a first type and the second computer program being operable so as to exchange medical data with a data processing device of a different type (col. 4 lines 17-27, col. 5 lines 51-59, col. 6 lines 1-6).

4. As to **Claim 2**, Tacklind teaches the system as claimed in claim 1, wherein the medical data include text data and graphical data, for instance X ray plots, scans plots or electro-cardiograms (the recitation following, "for instance", will be considered intended use and will not be given patentable weight (MPEP 2106), Fig. 10A-10J).

5. As to **Claim 3**, Tacklind teaches the system as claimed in claims 1 or 2, wherein on the electronic storage device graphical data representative of the appearance of the individual is stored and wherein the processor is programmed so as to load the graphical data from the connected electronic storage device and to display the data



representative of the appearance of the individual on the display device of the processing device so as to enable positive identification of the individual (Fig. 4A-4D, col. 8 lines 26-29).

6. As to **Claim 6**, Tacklind teaches the system as claimed in claim 1, comprising a first portable electronic storage device being configured so as to store thereon medical data in a first data format and a second portable electronic storage device being configured so as to store thereon medical data in a second data format, different from the first format (Fig. 4 and Fig. 10, col. 5 lines 24-30, col. 7 lines 39-55).

7. As to **Claim 7**, Tacklind teaches the system as claimed in claim 6, wherein on the first portable electronic storage device a first computer program is stored capable of having processed medical data in the first format, while on the second portable electronic storage device a second computer program is stored capable of having processed medical data in the second data format (Fig. 4 and Fig. 10, col. 4 lines 17-24, col. 5 lines 24-30, col. 7 lines 39-55).

8. As to **Claim 15**, Tacklind teaches the system as claimed in claim 1, wherein the processing device includes an entering device for entering data into the computer device and storing the entered data on the electronic storage device (Fig. 2, reads on, "Data Manager").

9. As to **Claim 18**, Tacklind teaches the as claimed in claim 1, wherein the data processing device is a personal computer (col. 6 lines 51-54, col. 7 lines 18-26).

10. As to **Claim 20**, Tacklind teaches the as claimed in claim 1, wherein the electronic storage device comprises a positioning system(col. 9 lines 44-54).

11. As to **Claim 21**, Tacklind teaches the as claimed in claim 1, wherein the electronic storage device is configured so as to store non-medical personal data (col. 6 lines 6-9).

12. As to **Claim 23**, Tacklind teaches the as claimed in claim 1, wherein the first and second interface are wireless communication devices so as to provide a wireless connection between the portable electronic storage device and the data processing device (col. 11 lines 39-43).

13. As to **Claim 24**, Tacklind teaches the as claimed in claim 1, wherein the first and second interface are wired communication devices so as to provide a wired connection between the portable electronic storage device and the data processing device (col. 11 lines 39-43).

### ***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 4-5, 8-14, and 25 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Tacklind (US 5,549,117) in view of official notice.

16. As to **Claims 4 8-14**, Tacklind does not specifically disclose wherein the electronic storage device is configured so as to provide access code protected access to the medical data stored thereon, wherein, depending on the access code, reading, adding and/or modifying rights are conferred for predefined subsets of medical data only and wherein the computer program is operable so as to permit the addition of a new user or group. However, it is well known in the art to protect medical data of a patient within a portable device and to do so with access codes that give certain users or group of users read, add, and/or modify permissions for a subset of medical data and to permit certain users, depending on their access rights permission, to create a new user or group, and official notice to that effect is hereby taken.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the invention of Tacklind to include access codes that give certain users read, add, and/or modify permissions, or create new permissions for new users for a subset of medical data for a portable device for the motivation for providing security for the patient.

17. As to **Claim 5**, Tacklind teaches the system as claimed in claim 4, wherein one of the predefined subsets of medical data is formed by emergency medical data (col. 7 lines 52-54).

18. As to **Claim 25**, Tacklind does not specifically disclose wherein the computer program is operable so as to provide text on the display device in one of a plurality of languages, said one language being user selected from a pre-stored list of languages.

However, it is well known in the art to provide a plurality of languages from a pre-stored list of languages, and official notice to that effect is hereby taken. For example, a user interface may ask if a user's preferred language is English or Spanish. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the invention of Tacklind to provide a plurality of languages for a user for the motivation for customizing the device for the user's preferences.

19. Claim(s) 16, 17 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Tacklind (US 5,549,117) in view of Sasaki (US 2002/0065685).

20. As to **Claims 16**, Tacklind does not specifically disclose wherein the processing device is a mobile phone and the electronic storage device is an external storage medium that can be connected to the mobile phone. Sasaki does teach wherein the processing device is a mobile phone and the electronic storage device is an external storage medium that can be connected to the mobile phone (Sasaki, paragraphs 76, 82). It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the invention of Tacklind to include a phone as the processing device for the motivation for storing data about a specific individual (Sasaki, paragraph 76).

21. As to **Claims 17**, Tacklind does not specifically disclose wherein the processing device is a mobile phone and the electronic storage device is an internal storage medium contained in the mobile phone. Sasaki does teach wherein the processing

device is a mobile phone and the electronic storage device is an internal storage medium contained in the mobile phone (Sasaki, paragraphs 78, 82). It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the invention of Tacklind to include a phone as the processing device for the motivation for storing data about a specific individual (Sasaki, paragraph 76).

22. Claim(s) 19 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Tacklind (US 5,549,117) in view of Merry et al. (US 2001/0037220).

23. As to **Claims 19**, Tacklind does not specifically disclose wherein a portable electronic storage device is configured so as to be implanted in a person. Merry does teach a portable electronic storage device is configured so as to be implanted in a person (Abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the invention of Tacklind to include a portable electronic storage device is configured so as to be implanted in a person for the motivation for improving the productivity and accuracy of medical data (Merry, paragraph 11).

24. Claim(s) 22 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Tacklind (US 5,549,117) in view of Merry et al. (US 2001/0037220).

25. As to **Claims 22**, Tacklind does not specifically disclose wherein at least part of the medical and/or health data stored on the electronic storage medium is encrypted.

Brown does teach wherein at least part of the medical and/or health data stored on the electronic storage medium is encrypted (col. 4 lines 27-29). It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the invention of Tacklind to include encrypted data within an electronic storage medium for the motivation for providing security for the user.

26. As to **Claims 26 and 28**, claims 26 and 28 recite substantially similar limitations to claims 1-25 and are therefore rejected using the same rationale and reasoning.

### ***Conclusion***

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SIND PHONGSVIRAJATI whose telephone number is (571) 270-5398. The examiner can normally be reached on Monday - Thursday 8:00am-5:00pm (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

/S. P./  
Examiner, Art Unit 3686  
18 May 2009

/Gerald J. O'Connor/  
Supervisory Patent Examiner  
Group Art Unit 3686